

## Message Text

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AMCONSUL KADUNA  
AMCONSUL IBADAN

UNCLAS LAGOS 06578

E. O. 11652: NA  
TAGS: EINV, NI  
SUBJ: INDIGENIZATION

REF : LAGOS 6487 (NOTAL)

AFTER NEPB CHAIRMAN AL-HAKIM MADE VERBAL REQUEST FOR EMBASSY ASSISTANCE IN URGING U.S. FIRMS HERE TO COMPLETE INDIGENIZATION PAPERWORK REQUIREMENTS AS SOON AS POSSIBLE, HE STATED HE WOULD ANSWER QUESTIONS RE NEW DECREE. HIS REMARKS NOT RPT NOT FOR PUBLICATION.

Q'S AND A'S FOLLOW:

1. Q. HOW LONG CAN FOREIGN INVESTORS EXPECT THE 1977 DECREE TO REMAIN IN FORCE?

A. AL-HAKIN SAID IT WAS IMPOSSIBLE TO JUDGE BUT SPECULATED THAT A CIVILIAN GOVERNMENT WOULD BE HARD PUT TO PASS NEW SWEEPING DECREE LIKE MEASURES, I.E., IT  
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WOULD TEND TO BE A GOVERNMENT OF ACCOMMODATION. ALSO SINCE THE 1977 DECREE COVERS THE ENTIRE ECONOMY, IT HAS "MORE ROOM FOR STABILITY" THAN PREVIOUS INDIGENIZATION MEASURES WHICH WERE FULL OF LOOPHOLES.

2. Q. WILL THERE BE A DECREE CLAFIFYING THE PROVISIONS OF THE 1977 DECREE?

A. AL-HAKIM THOUGHT THE DECREE GRANTED HIM AND THE PERM-  
SEC KIN INDUSTRIES SUFFICIENT POWER TO TAILOR THE DE-  
CREE TO FIT NIGERIAN AND FOREIGN INVESTMENT NEEDS.  
IF NOT, A CLARIFYING DECREE WAS POSSIBLE.

3. Q. SECTION 16 OF THE DECREE ALLOWS THE FMG TO CHANGE  
ENTERPRISES FROM ONE SCHEDULE TO ANOTHER. ARE MANY  
SCHEDULE SWITCHES AND EVEN DECREE EXEMPTIONS LIKELY?

A. AL-HAKIM STATED THAT THE NEPB WILL BE FLEXIBLE IN  
IMPLEMENTING THE DECREE AND PROMISED THAT EACH PETI-  
TION WILL BE JUDGED ON ITS OWN MERIT. THUS SCHEDULE  
SWITCHES (E.G., FROM SCHEDULE II TO SCHEDULE III) ARE  
POSSIBLE. HOWEVER, ALTHOUGH HE WOULD NOT "CLOSE THE  
DOOR" ON THE SUBJECT OF A DECREE EXEMPTION, HE STATED  
FORCEFULLY THAT THE POSSIBILITY OF AN EXEMPTION WAS  
"REMOTE."

4. Q. THERE ARE SOME HIGH TECHNOLOGY INDUSTRIES NOW LISTED  
UNDER SCHEDULE II, E.G., CONSTRUCTION AND TIRE MAKING.  
IS THERE HOPE THAT THEY WOULD BE REASSIGNED TO SCHE-  
DULE III PER AUTHORITY CONTAINED UNDER SECTION 16 OF  
THE DECREE?

A. AL-HAKIM ADMITTED THAT SEVERAL INDUSTRIES WHICH  
SHOULD HAVE BEEN IN SCHEDULE III WERE THROWN INTO  
SCHEDULE II IN LAST MINUTE RUSH TO PUBLISH THE DECREE.  
PETITIONS FROM CERTAIN INDUSTRIES INCLUDING TIRE

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CONSTRUCTION WOULD RECEIVE FAVORABLE HEARINGS. HOW-  
EVER, CONSTRUCTION IS NOT ONE OF THESE. AL-HAKIM  
SAID HE RECOMMENDED DIVIDING THE CONSTRUCTION INDUS-  
TRY INTO TWO CATEGORIES WITH LARGE SCALE JOINT  
VENTURES FALLING UNDER SCHEDULE III, BUT HIS RECOM-  
MENDATION WAS REJECTED BY THE SMC.

5. Q. SOME MANUFACTURING ENTERPRISES IN SCHEDULES II AND III  
HAVE WHOLESALE DISTRIBUTION (SCHEDULE I) INTEGRATED  
INTO THEIR OPERATIONS FOR REASONS OF EFFICIENCY.  
WILL THEY BE FORCED TO SPLIT UP THEIR OPERATIONS TO  
CONFORM TO THE DECREE?

A. AL-HAKIM SAID THAT IT WAS IMPOSSIBLE TO MAKE A GENE-  
RALIZATION IN THIS AREA. EACH PETITION WOULD BE  
JUDGED SEPARATELY. IN THEORY, HE APPRECIATED THE  
COMPANIES' ARGUMENT BUT SAID THAT MANY FIRMS WERE  
USING IT TO "MONOPOLIZE THE MARKET" AND HENCE "STOKE  
INFLATION." HE STATED HOWEVER THAT MANUFACTURING

ENTERPRISES THAT HAD EXTENSIVE WHOLESALE DISTRIBUTORSHIPS THROUGHOUT NIGERIA WOULD RECEIVE A MORE FAVORABLE HEARING THAN THOSE WHO DID NOT.

6. Q. THE FMG HAS ACQUIRED EQUITY IN THE BANKING, INSURANCE AND PETROLEUM SECTORS. WILL IT ACQUIRE EQUITY IN OTHER SECTORS?

A. AL-HAKIM PREFACED HIS RESPONSE BY STATING THAT HE WAS NOT DIRECTLY INVOLVED IN FORMULATING THIS POLICY. HE THEN EXPRESSED HIS OPINION REPEAT OPINION THAT THE FMG PROBABLY WOULD ACQUIRE EQUITY IN OTHER SECTORS. HE WOULD NOT SPECULATE WHICH SECTORS HE CONSIDERED PRIME CANDIDATES.

7. Q. IF PUBLIC DEMAND IS INSUFFICIENT TO ABSORB ALL NEW EQUITY ISSUES, WILL THE FMG STEP IN AND ACQUIRE SLOW UNCLASSIFIED

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MOVING ISSUES?

A. AL-HAKIM ANSWERED UNEQUIVOCALLY THAT THE FMG WOULD ACQUIRE ALL SUCH STOCK OFFERINGS AND PLACE THEM IN A "PUBLIC SECTOR TRUST" WHICH WOULD BE OFFERED TO THE PUBLIC WHEN DEMAND WARRANTED.

8. Q. CAN AN EXPATRIATE ENTERPRISE MEET THE NEW INDIGENIZATION REQUIREMENTS BY SELLING EQUITY TO AN EXPATRIATE/NIGERIAN JOINT VENTURE?

A. "NO." AL-HAKIM SAID THAT SECTION 23 OF THE DECREE EXPLICITLY STATES THAT SHARES CAN ONLY BE SOLD TO A NIGERIAN CITIZEN OR ASSOCIATION WHICH DO NOT INCLUDE NIGERIAN REGISTERED JOINT VENTURES WITH EXPATRIATES.

9. Q. SOME ENTERPRISES, E.G., CONSTRUCTION, DO NOT OPERATE EFFICIENTLY IF OWNERSHIP IS FRAGMENTED. MUST A NEW ENTERPRISE WITH A CAPITALIZATION OF OVER NAIRA 600,000 DISTRIBUTE EQUITY TO 12 DIFFERENT PARTNERS AS SEEMS TO BE REQUIRED BY THE DECREE'S SECTION 11?

A. AL-HAKIM GAVE TWO RESPONSES. FIRST -- FOR NEW COMPANIES, THE NEPB ENCOURAGED A WIDE DISTRIBUTION OF EQUITY BUT REALIZED THE PRACTICAL DIFFICULTIES INVOLVED. THUS, THIS RULE WAS "NOT HARD AND FAST," I.E., NOT MANDATORY. SECOND, FIRMS ALREADY ESTABLISHED HERE MUST, HOWEVER, COMPLY WITH THE SECTION II PROVISIONS.

10. Q. UNDER WHAT CIRCUMSTANCES DOES A MANAGEMENT CONTRACT

CONFLICT WITH THE INTENT OF THE DECREE?

A. AL-HAKIM ANSWERED THAT THE INDIGENIZATION DECREE WAS CONCERNED ONLY WITH EQUITY TRANSFERS. THE FMG RECOGNIZED THE NEED OF MANAGEMENT SKILLS AND HENCE OF UNCLASSIFIED

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MANAGEMENT AND TECHNICAL ASSISTANCE AGREEMENTS AS LONG AS THEY ABIDED BY THE GROUND RULES DEFINED BY THE MINISTRY OF FINANCE.

11. Q. CAN A FOREIGN-NIGERIAN JOINT VENTURE SUBCONTRACT A JOB TO THE FOREIGN PARTNER'S PARENT COMPANY?

A. NO. AL-HAMIM SAID THIS IS FORBIDDEN BY THE MINISTRY OF TRADE.

12. Q. SOME COMPANIES HAVE WON A SERIES OF SUBCONTRACTS AND YET HAVE NOT REGISTERED. COMMENT?

A. AL-HAKIM STATED THAT THIS PRACTICE WAS AGAINST THE SPIRIT AND LETTER OF NIGERIA'S INDIGENIZATION AND OTHER MEASURES (E.G., COMPANY DECREE OF 1968). HE SAID THAT ONE OF THE DUTIES OF AN EXPANDED NEPB WILL BE TO FERRET OUT SUCH VIOLATORS.

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